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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

PETER BATCHKOFF on behalf of himself
and others similarly situated,

Plaintiff,

v.

BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.,

Defendant

Case No. C10-4830-EDL

**STIPULATION TO STAY ACTION;
[PROPOSED] ORDER THEREON**

Complaint Filed: September 24, 2010
Trial Date: None set

TO THE HONORABLE COURT:

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff PETER BATCHKOFF (“Plaintiff”) and Defendant BOEHRINGER INGELHEIM PHARMACEUTICALS, INC. (“Defendant”), through their respective counsel of record, as follows:

RECITALS

1. The complaint commencing this action was filed on September 24, 2010 in the San Francisco County Superior Court. Defendant removed this action to federal Court on October 25, 2010.

2. The gravamen of Plaintiff's Complaint is the application of the administrative and outside sales person exemptions to pharmaceutical representatives employed by Boehringer Ingelheim Pharmaceuticals, Inc. The applicability of the exemptions to pharmaceutical representatives employed by Bayer Corp., Wyeth, and AstraZeneca LP is currently pending before the Ninth Circuit Court of Appeal in the following three cases: *D'Este v. Bayer Corp.*, COA No. 07-56577 ("*Bayer*"); *Barnick v. Wyeth*, COA No. 07-56684 ("*Wyeth*"); and *Menes v. AstraZeneca LP*, COA No. 07-56120 ("*Menes*"). Oral argument was heard in the three cases on February 11, 2009. On May 5, 2009, the Ninth Circuit submitted questions on the applicability of the outside sales person exemption and the administrative exemption to pharmaceutical representatives to the California Supreme Court which was denied. The Ninth Circuit subsequently entered an order on July 13, 2009, staying the *Bayer*, *Wyeth* and *Menes* cases pending a decision by the California Supreme Court in *Harris v. Superior Court* (No. S-156555) ("*Harris*").

3. At least two other cases involving pharmaceutical representatives in the Ninth Circuit have been stayed pending outcome of *Bayer*, *Wyeth* and *Menes*. (See *Brody v. AstraZeneca LP*, COA No. 08-56120 and *Rivera v. Schering Corp.*, COA No. 08-56565). A putative class action case involving pharmaceutical representatives in the Central District of California has also been stayed. (*Silverman v. Smithkline Beecham Corp.*, Case No. CV 06-07272).

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STIPULATION

In light of the recitals detailed above, and the possibility that the *Bayer*, *Wyeth* and *Menes* decisions will provide guidance in this case, the Parties stipulate and agree to stay this case until decisions have been issued by the Ninth Circuit in *Bayer*, *Wyeth* and *Menes* to avoid wasting judicial resources and to avoid expending attorneys' fees and costs litigating unfocused issues in this case.

Date: March 8, 2011

JACKSON LEWIS LLP

By: /s/ Cary G. Palmer

Cary G. Palmer
Nathan W. Austin

Attorneys for Defendant
BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.

Date: March 8, 2011

RUDY, EXELROD, ZIEFF & LOWE, LLP

By: /s/ Steven G. Zieff

Steven G. Zieff (SBN 84222)
David A. Lowe (SBN 178811)
John T. Mullan

Attorneys for Plaintiff

IT IS SO ORDERED.

Dated: March 16, 2011


Judge Elizabeth S. LaPorte

JERREY S. WHITE

UNITED STATES DISTRICT JUDGE

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